

Below is an Order of the Court.


RANDALL L. DUNN
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF OREGON

In Re:)	Bankruptcy Case
)	No. 06-30053-rld13
ROBERT EUGENE STEWART and TERRI)	
LENETTE STEWART,)	
)	
Debtors.)	
_____)	
)	
ROBERT EUGENE STEWART and TERRI)	
LENETTE STEWART,)	
)	Adv. Proc. No. 06-3135-rld
Plaintiffs,)	
)	
v.)	MEMORANDUM OPINION
)	
PACIFIC COAST RECOVERY SERVICE,)	
INC., an Oregon corporation,)	
)	
Defendant.)	
_____)	

In this adversary proceeding ("Adversary Proceeding"), the debtor plaintiffs, Robert and Terri Stewart (the "Stewarts"), seek a declaratory judgment that the defendant Pacific Coast Recovery Service, Inc.'s ("Pacific") claims against the Stewarts were discharged in the Stewarts' prior chapter 7 case and that Pacific's judgment liens against

1 the Stewarts' residence property are void as having been obtained in
2 violation of the automatic stay of 11 U.S.C. § 362(a)(4).¹ The Stewarts
3 have filed a Motion for Judgment on the Pleadings, to which Pacific has
4 responded and has made its own Motion for Judgment on the Pleadings.

5 I heard argument on the competing motions at a hearing (the
6 "Hearing") on May 2, 2006. Following the Hearing, I have reviewed the
7 pleadings and memoranda filed by the parties in the Adversary Proceeding
8 and relevant records of this court, as well as applicable legal
9 authorities. I have considered carefully the parties' arguments in light
10 of the record. I find in favor of the Stewarts that Pacific's claims
11 against them individually were discharged in the Stewarts' prior chapter
12 7 bankruptcy, but I find that Pacific is entitled to a declaratory
13 judgment that its judgment liens against the Stewarts' residence property
14 were not voided by operation of the automatic stay in the Stewarts' prior
15 chapter 7 bankruptcy. I state the reasons for my decisions as follows:

16 Factual Background

17 The facts in this matter are not in dispute. Pacific filed
18 default papers against the Stewarts in two Washington County Circuit
19 Court actions, case number C031228CV and case number C032134CV, on or
20 about October 9, 2003. On October 10, 2003, a judgment was signed and
21 filed by Judge Nachtigal in case number C031228CV awarding Pacific
22 \$79,556.20, including principal of \$73,150, prejudgment interest of
23

24 ¹ Unless otherwise noted, all statute section references are to the
25 Bankruptcy Code, 11 U.S.C. §§ 101-1532. The provisions of Section 362
26 considered in this Memorandum Opinion were not altered by the Bankruptcy
Abuse Prevention and Consumer Protection Act of 2005.

1 \$5,464.20, attorney fees of \$500 and costs of \$442, plus postjudgment
2 interest at 9%. On October 10, 2003, a judgment was signed and filed by
3 Judge Nachtigal in case number C032134CV awarding Pacific \$12,365.02,
4 including principal of \$10,986.86, prejudgment interest of \$436.16,
5 attorney fees of \$500, and costs of \$442, plus postjudgment interest at
6 9%. The judgment in case number C032134CV was docketed by the Washington
7 County Circuit Court clerk (the "Clerk") in the court's register on
8 October 14, 2003, at 10:15 a.m. The judgment in case number C031228CV
9 was docketed by the Clerk in the court's register on October 14, 2003, at
10 10:35 a.m. Hereafter, Pacific's two default judgments entered against
11 the Stewarts in Washington County Circuit Court are referred to
12 collectively as the "Judgments."

13 Meanwhile, the Stewarts filed a chapter 7 bankruptcy petition
14 with the United States Bankruptcy Court for the District of Oregon in
15 case number 03-41538 (the "2003 Bankruptcy Case") on October 14, 2003, at
16 9:53 a.m. Pacific was scheduled as a creditor in the 2003 Bankruptcy
17 Case. The Stewarts received a discharge in the 2003 Bankruptcy Case, and
18 the 2003 Bankruptcy Case was closed as a "no asset" chapter 7 case when
19 the Stewarts' discharge order was entered by this court.

20 The Stewarts' currently pending chapter 13 case (the "Pending
21 Chapter 13 Case"), filed on January 11, 2006, is the fourth chapter 13
22 case filed by the Stewarts since the 2003 Bankruptcy Case was closed.
23 The Stewarts have not obtained a discharge in any of their chapter 13
24 cases.

25 Jurisdiction

26 This court has core jurisdiction to rule in this Adversary

1 Proceeding under 28 U.S.C. §§ 1334, 157(b)(1) and 157(b)(2)(I), (K) and
2 (O), and pursuant to United States District Court for the District of
3 Oregon Local Rule 2100.

4 Legal Discussion

5 There appears to be no dispute between the parties, as
6 reflected in the Adversary Proceeding pleadings, that Pacific's claims
7 against the Stewarts personally, based on the Judgments, were discharged
8 in the 2003 Bankruptcy Case. The contested issue is whether the liens of
9 the Judgments on the Stewarts' residence property are valid or void.

10 The creation of judgment liens is governed by Oregon state law.
11 See Hansen v. Jones, 57 Or. 416 (1910). Under the Oregon statutes and
12 Rules of Civil Procedure in effect in October, 2003,² Pacific's Judgments
13 did not attach as liens on the Stewarts' residence property until they
14 were docketed by the Clerk in the court register.

15 [F]rom the time of docketing an original or renewed
16 circuit court judgment..., such judgment shall be a
17 lien upon all the real property of the judgment debtor
18 within the county where the same is docketed, or which
19 the judgment debtor may afterwards acquire therein,
20 during the time prescribed in ORS 18.360. Such
21 judgment shall not be a lien upon any real property of
22 the judgment debtor acquired after the effective date
23 of the discharge of the judgment under federal
24 bankruptcy laws. All docketed judgments shall be
25 presumed to have not been discharged until the
26 judgment debtor establishes that the judgment has been
discharged. ORS § 18.350(1).

23 ² The Oregon statutes and Rules of Civil Procedure dealing with the
24 creation of judgment liens were amended by the Oregon state legislature
25 during the 2003 legislative session, but the revised statutory framework
26 did not become effective until January 1, 2004.

1 See also ORCP 70B(2): "Notwithstanding ORS 3.070 or any other rule or
2 statute, for purposes of these rules, a judgment is effective only when
3 entered in the register as provided in this rule."

4 "Docketing the judgment" is an act delegated to the court clerk
5 to perform after "filing," which occurs when the judgment is delivered to
6 the clerk by the judge with the intention that it be entered on the
7 docket. Blackledge v. Harrington, 289 Or. 139, 143, 242 Or. 566, 570-71
8 (1966). However, ORCP 70B(3) provided that, "[t]he clerk shall enter the
9 judgment in the register within 24 hours, excluding Saturdays and legal
10 holidays, of the time the judgment is filed. When the clerk is unable to
11 or omits to enter judgment within the time prescribed in this subsection,
12 it may be entered any time thereafter." [Emphasis added.]

13 The Stewarts' position is that even if the Judgments were
14 "filed" on October 10, 2003, they were not entered in the Washington
15 County Circuit Court register, and thus were not effective as judgment
16 liens, until after the Stewarts filed the 2003 Bankruptcy Case.
17 Consequently, the Stewarts argue that the liens of the Judgments are void
18 as violating the automatic stay of § 362(a)(4).

19 Section 362(a)(4) provides that the filing of a bankruptcy
20 petition "operates as a stay, applicable to all entities, of...any act to
21 create, perfect, or enforce any lien against property of the estate."
22 Interpreting the scope of the automatic stay is a matter of federal law.
23 See In re Gruntz, 202 F.3d 1074, 1087 (9th Cir. 2000) ("[B]ankruptcy
24 courts have the ultimate authority to determine the scope of the
25 automatic stay imposed by 11 U.S.C. § 362(a), subject to federal
26 appellate review.").

1 The automatic stay is designed to provide a "breathing space"
2 for the debtor and in chapter 7 cases, the trustee to evaluate and
3 preserve assets for the benefit of the debtor and the bankruptcy estate.
4 Accordingly, the automatic stay "sweeps broadly, enjoining the
5 commencement or continuation of any judicial, administrative, or other
6 proceedings against the debtor, enforcement of prior judgments,
7 perfection of liens, and 'any act to collect, assess or recover a claim
8 against the debtor that arose before the commencement of the case.'" In
9 re Pettit, 217 F.3d 1072, 1077 (9th Cir. 2000).

10 However, there are exceptions to application of the automatic
11 stay, and one of the exceptions recognized by the Ninth Circuit is the
12 exception for purely ministerial acts.

13 This exception stems from the common-sense principle
14 that a judicial "proceeding" within the meaning of
15 section 362(a) ends once a decision on the merits has
16 been rendered. Ministerial acts or automatic
17 occurrences that entail no deliberation, discretion,
18 or judicial involvement do not constitute
19 continuations of such a proceeding. In re Pettit, 217
20 F.3d at 1080.

21 As described by the First Circuit in In re Soares, 107 F.3d 969, 974 (1st
22 Cir. 1997), a ministerial act

23 is one that is essentially clerical in nature....Thus
24 when an official's duty is delineated by, say, a law
25 or judicial decree with such crystalline clarity that
26 nothing is left to the exercise of the official's
27 discretion or judgment, the resultant act is
28 ministerial....Such acts can usefully be visualized as
29 the antithesis of judicial acts, inasmuch as the
30 essence of a judicial act is the exercise of
31 discretion or judgment....

32 Virtually, by definition, a judicial proceeding
33 does not conclude until the judicial function is
34 completed, that is until the judicial decision is
35 made. See, e.g., Biderman, 21 F.3d at 528 (holding

1 that the judicial function is completed "at the moment
2 the judge direct[s] entry of judgment"). Frequently,
3 routine scrivenering, such as recordation or entry on
4 the docket, follows on the heels of a judicial
5 decision. Such action--taken in obedience to the
6 judge's peremptory instructions or otherwise defined
7 and nondiscretionary--are ministerial and,
8 consequently, do not themselves violate the automatic
9 stay even if undertaken after an affected party files
10 for bankruptcy.

11 See, e.g., Knightsbridge Dev., 884 F.2d at 148
12 (suggesting that merely recording a previously decided
13 award would be a "clerical act" and therefore would
14 not infract the automatic stay); In re Capgro Leasing
15 Assocs., 169 B.R. 305, 315-16 (Bankr. E.D.N.Y.
16 1994)(stating that "entry of a judgment will
17 constitute a 'ministerial act' where the judicial
18 function has been completed and the clerk has merely
19 to perform the rote function of entering the judgment
20 upon the court's docket")....

21 Pacific argues that once Judge Nachtigal signed and filed the
22 Judgments, judicial decisionmaking was complete, and what remained was
23 the nondiscretionary, civil rule mandated acts of the Clerk in docketing
24 the Judgments in the court register. Such acts were purely ministerial
25 and consequently did not violate the automatic stay imposed in the 2003
26 Bankruptcy Case.

While conceding that no discretion was involved when the Clerk
docketed the Judgments, the Stewarts argue that the absolute language of
Section 362(a)(4) creates an "exception to the exception" for ministerial
acts that in effect create a judgment lien. As authority for their
position, the Stewarts cite 3 Collier on Bankruptcy, ¶ 362.03[3][e] at
p. 362-18 (15th ed. rev. 2005), which states the following:

Given the importance of the automatic stay, the
concept of purely ministerial acts should be narrowly
construed to protect only those acts that are clerical
in nature and do not involve the exercise of any
discretion or judgment. Thus, entry by the clerk of a

1 judgment previously ordered by the court may be a
2 purely ministerial act which may be taken without
3 violating the stay, while the court's ordering entry
4 of a judgment involves a judicial function that goes
5 beyond a merely ministerial act and, thus, would be
subject to the stay. Even the entry of a judgment on
the judgment docket may be stayed to the extent that
such entry creates a judgment lien on property of the
estate.

6 Case authorities are cited for all of the statements in the foregoing
7 passage from Collier's, except the last statement, which relies solely on
8 the language of Section 362(a)(4). Accordingly, it is a statement by the
9 editors of Collier's as to how they believe a provision of the Bankruptcy
10 Code should be interpreted rather than how it actually is being
11 interpreted by courts.

12 There are few decisions regarding the extent of the
13 "ministerial acts" exception to the automatic stay, but every decision
14 that I have reviewed that considers the effect of the automatic stay with
15 respect to the nondiscretionary entry or docketing of a judgment after
16 the judgment has been ordered or signed by the court has excepted the act
17 of entering or docketing the judgment from the automatic stay. See,
18 e.g., In re Papatones, 143 F.3d 623, 624-25 (1st Cir. 1998)(Debtor held
19 ineligible for relief under chapter 13 even though the oral judgment that
20 pushed him over the unsecured debt limit was not reduced to writing and
21 entered on the docket until the day after his chapter 13 petition was
22 filed); Rexnord Holdings, Inc. v. Bidermann, 21 F.3d 522,528 (2d Cir.
23 1994)("The judicial proceedings were concluded at the moment the judge
24 directed entry of judgment, a decision on the merits having then been
25 rendered....The clerk's subsequent entry of the judgment, after the
26 automatic stay became effective, therefore did not violate section

1 362(a)(1)."); Teachers Ins. & Annuity Ass'n v. Butler, 803 F.2d 61, 66
2 (2d Cir. 1986); In re Capgro Leasing Associates, 169 B.R. 305, 314-16
3 (Bankr. E.D.N.Y. 1994)("In the instant case, the state Court Clerk's
4 signing and entering of the Judgment upon the State Court's docket were
5 ministerial acts (or rote functions) under Bidermann, since they took
6 place after the judicial function had been completed."); and Teachers
7 Ins. & Annuity Ass'n v. Butler, 58 B.R. 1019, 1022 (S.D.N.Y.), aff'd, 803
8 F.2d 61 (2d Cir. 1986).

9 The Stewarts emphasize that most of these decisions consider
10 the impact of Section 362(a)(1) rather than Section 362(a)(4). Section
11 362(a)(1) provides that the filing of a bankruptcy petition

12 operates as a stay, applicable to all entities, of--
13 the commencement or continuation, including the
14 issuance or employment of process, of a judicial,
15 administrative, or other action or proceeding against
16 the debtor that was or could have been commenced
17 before the commencement of the case under this title,
18 or to recover a claim against the debtor that arose
19 before the commencement of the case under [Title 11].

20 I do not find that the scope of Section 362(a)(1) is any less
21 comprehensive than Section 362(a)(4), in spite of the lack of the words
22 "any act...."

23 I note that the district court in the Butler case did not
24 differentiate among any of the provisions of Section 362 in applying the
25 ministerial acts exception to the automatic stay. See Teachers Ins. &
26 Annuity Ass'n v. Butler, 58 B.R. at 1022. In In re Pettit, the decision
in which the Ninth Circuit adopted the ministerial acts exception for
this Circuit, the court discusses the automatic stay of Section 362
generally, but affirms the district court's reversal of the

1 bankruptcy court's application of Sections 362(a)(2) and 362(a)(3),
2 agreeing that the debtors' interest in contested funds was extinguished
3 when the trial court entered judgment against the debtors and ordered the
4 funds released, even though a check was not delivered to the prevailing
5 party until after the debtors' bankruptcy petition was filed.³ See 217
6 F.3d at 1077-80.

7 I find that the Stewarts' attempt to create an exception to
8 application of the ministerial acts exception to the automatic stay of
9 Section 362, by highlighting differences in the language of Section
10 362(a)(4) from the language of other subsections of Section 362(a)
11 recognizes a distinction without any real difference.

12 In the Adversary Proceeding, I am dealing only with issues
13 between the debtors, the Stewarts, and Pacific with regard to the 2003
14 Bankruptcy Case. The case and the estate were closed on January 30,
15 2004, without the chapter 7 trustee ever attempting to assert an estate
16 interest in the Stewarts' residence property. Any interest that the
17 estate might have had was abandoned to the Stewarts when the case closed.
18 See § 554(c). Accordingly, there is no estate stake in the Adversary
19 Proceeding.

20 There are provisions of the Bankruptcy Code that were available
21

22 ³ Section 362(a)(2) provides that the filing of a bankruptcy
23 petition operates as a stay of the "enforcement, against the debtor or
24 against property of the estate, of a judgment obtained before the
25 commencement of the case under [Title 11]." Section 362(a)(3) provides
26 that the filing of a bankruptcy petition operates as a stay of "any act
to obtain possession of property of the estate or property from the
estate or to exercise control over property of the estate." [Emphasis
added.]

1 for use by the chapter 7 trustee with respect to Pacific's judgment liens
2 in the 2003 Bankruptcy Case, if the estate had an interest in realizing
3 value from the Stewarts' residence property, for example, Section 547,
4 the preference provision. No efforts were undertaken by the trustee to
5 avoid Pacific's judgment liens for the benefit of the estate. This is a
6 dispute between the Stewarts and Pacific only, and the liens of Pacific's
7 Judgments are subordinate to the Stewarts' homestead exemption under
8 Oregon law.

9 Considering the record in this Adversary Proceeding in light of
10 the preceding analysis of relevant authorities, I find that even though
11 the Stewarts filed their chapter 7 petition in the 2003 Bankruptcy Case
12 before the Clerk docketed Pacific's Judgments, docketing those Judgments
13 after the Washington County Circuit Court judge had signed and filed them
14 was a purely ministerial act that was not enjoined by the automatic stay
15 of Section 362(a)(4). I find that the liens of the Judgments are not
16 void as violating the automatic stay and continue to exist as
17 encumbrances on the Stewarts' residence property.

18 Conclusion

19 I grant the Stewarts' Motion for Judgment on the Pleadings to
20 the extent that it requests a declaratory judgment that Pacific's claims
21 against the Stewarts individually were discharged in the 2003 Bankruptcy
22 Case. I otherwise deny the Stewarts' Motion for Judgment on the
23 Pleadings, and I grant Pacific's Motion for Judgment on the Pleadings,
24 finding that Pacific is entitled to a declaratory judgment that the liens
25 of the Judgments on the Stewarts' residence property were not voided by
26 operation of the automatic stay in the 2003 Bankruptcy Case.

1 Mr. Kavanaugh should submit an appropriate form of judgment within ten
2 (10) days following entry of this Memorandum Opinion, after submitting
3 the judgment for approval as to form to Mr. Hoarfrost.

4 ###

5 cc: Daniel Hoarfrost
6 Michael J. Kavanaugh
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